

ATTACHMENT B

TO PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION
TO STRIKE THE EXPERT REPORT OF STEVEN WOLLACK

Deposition Transcript of Steven Wollack
(excerpts)

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES COMMODITY)
4 FUTURES TRADING)
5 COMMISSION,)
6 Plaintiff,)
7 vs.) No. 12-cv-8791 (CM)
8 ERIC MONCADA; BES)
9 CAPITAL LLC; and)
SERDIKA LLC,)
Defendants.)

10 The deposition of STEVEN E. WOLLACK, ESQ.,
11 called for examination pursuant to the Rules of
12 Civil Procedure for the United States District
13 Courts pertaining to the taking of depositions,
14 taken before JENNIFER M. DALY, a Certified Shorthand
15 Reporter, within and for the County of Cook and
16 State of Illinois, at 525 West Monroe Street,
17 Suite 1100, Chicago, Illinois, on the 2nd day of
18 December, 2013, at the hour of 8:07 o'clock a.m.

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1 APPEARANCES:

2 COMMODITY FUTURES TRADING COMMISSION

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23 REPORTED BY: JENNIFER M. DALY, RPR, CSR, CCR

24 LICENSE NO.: 084-004688

1 I N D E X

2 WITNESS: STEVEN E. WOLLACK, ESQ.

3 EXAMINATION PAGE

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5 BY MR. ASCHE 138

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7 E X H I B I T S

8 CFTC PAGE

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1 A. [REDACTED]

2 as in boy, Chicago, [REDACTED].

3 Q. What's your personal email address?

4 A. [REDACTED].com.

5 Q. Are you known by any other names?

6 A. No.

7 Q. What is your date and place of birth?

8 A. [REDACTED].

9 Q. Mr. Wollack, you are being offered as an
10 expert witness by counsel for defendant Eric
11 Moncada, correct?

12 A. Correct.

13 Q. You're a licensed attorney, correct?

14 A. Yes.

15 Q. You're not testifying here as a legal
16 expert, correct?

17 A. Correct.

18 Q. You don't intend to provide legal
19 opinions for the Court, correct?

20 A. Correct.

21 Q. You don't intend to interpret the law
22 for the Court, correct?

23 A. Correct.

24 Q. What type of expert witness are you

1 acting as?

2 MR. ASCHE: Object to form.

3 THE WITNESS: A commodities and

4 futures expert.

5 BY MR. RIDENOUR:

6 Q. What do you mean by "commodities and

7 futures expert"?

8 A. Someone who has traded commodities and
9 futures since 1977, someone who has served on the
10 board of directors at the Chicago Mercantile
11 Exchange. I've been an officer of the Exchange.
12 Someone who has been a chairman of the disciplinary
13 committees of the Chicago Mercantile Exchange.

14 So that's my background as to my
15 expertise in what I'm testifying about.

16 Q. Are all --

17 A. Let me make it clear: I am not
18 testifying as a representative of the Chicago
19 Mercantile Exchange, on behalf of the Exchange. I'm
20 testifying as an individual in my own capacity as a
21 trader and member of the Chicago Mercantile
22 Exchange.

23 Q. Are all of the experiences that would
24 qualify you to act as a commodity and futures

1 BY MR. RIDENOUR:

2 Q. Are you providing -- is your expert
3 testimony based on an analysis of data?

4 A. Partially, yes.

5 Q. Do you have a background analyzing
6 trading data?

7 A. A general background in the course of my
8 experience as a trader as a member -- as a chairman
9 of the disciplinary committees, do I sit there and
10 analyze data the same way as a market regulation
11 person would who's an auditor, no, but in terms of a
12 general oversight, a general looking at data, yes,
13 I've done that.

14 Q. Mr. Wollack, the document that we've
15 marked as Exhibit 2, the document doesn't have page
16 numbers on it?

17 A. Correct.

18 Q. Can we agree to start marking pages
19 starting on the page with the header,
20 "Qualifications as an Expert" as page 1?

21 MR. ASCHE: Yes.

22 THE WITNESS: Yes.

23 BY MR. RIDENOUR:

24 Q. Okay. Could you, I guess, just go ahead

1 referred to it in the report as I didn't have the
2 data for that.

3 Q. And what specific data are you saying
4 you didn't have access to?

5 A. I believe it was Eric Moncada's trades
6 on those dates of -- there were, I think, three or
7 four dates that I didn't -- three dates I didn't
8 have data of; October 14th, 19th, and 30th of 2009.

9 So, I wasn't able to analyze any of the
10 trade data from that day.

11 Q. If Mr. Wollack does supplement his
12 report, we would reserve the right to take a
13 separate deposition regarding any supplementation.

14 A. Sure.

15 Q. And when you're saying that you didn't
16 have access to trade data, what -- and it was trade
17 data regarding Eric Moncada's trades on three of the
18 dates?

19 A. Correct. And all of his large, you
20 know, lot orders that were either executed or
21 cancelled.

22 Q. What data did you have access to when
23 you prepared your report?

24 A. I had the trades he made on the days

1 about, I guess for the record, these are programs
2 where a computer reviews trade data and recommends
3 trades based on market factors?

4 A. Those and then there are some where
5 there are so-called expert traders who will tell
6 you, based on their study of the market, that you
7 should buy or sell at a given level, or something
8 like that.

9 Q. When you provided your expert opinion in
10 the Pearce matter, did you conduct any analysis of
11 any trading?

12 A. No.

13 Q. What was the ultimate outcome of that
14 case?

15 A. A hung jury. It was a criminal matter.

16 Q. The second case that you reference on
17 page 2 of your expert report, which is marked as
18 Exhibit 2, is an NFA hearing testimony in
19 November 2012 in the matter Conway v. Dorman,
20 D-O-R-M-A-N, Trading, LLC, 10-ARB-120.

21 On whose behalf did you testify in that
22 matter?

23 A. Conway, the plaintiff.

24 Q. What were the allegations in this

1 matter?

2 A. He claimed that the Commodity Trading
3 Advisor was not registered and gave bad advice.

4 Q. What opinion did you provide in this
5 matter?

6 A. I provided opinion as to his lack of
7 registration.

8 Q. Did you provide an opinion on anything
9 else?

10 A. No, I do not believe I did.

11 Q. What was the basis for your opinion as
12 to the lack of registration?

13 A. The NFA rules on registration and
14 exemptions for CTAs.

15 Q. I guess, just to clarify for the record,
16 CTA is Commodity Trading Advisor?

17 A. Correct.

18 Q. And for the record, NFA is National
19 Futures Association, correct?

20 A. Yes.

21 Q. So just, I guess, to clarify, the
22 opinion that you provided was whether or not the
23 defendant in that arbitration was required to be
24 registered under NFA rules?

1 A. Correct.

2 Q. Did you conduct any analysis of trading
3 for that matter?

4 A. No.

5 Q. What was the ultimate outcome of that
6 matter?

7 A. Conway obtained a judgment of -- an
8 award, I should say, of 500 and something thousand
9 dollars, but that was far less than he was asking.

10 Q. And the third matter that you referred
11 to is the matter of Sonson, S-O-N-S-O-N, v.
12 MF Global Inc., matter in the U.S. District Court
13 for the Northern District of Illinois, Case
14 No. 1:10-cv-3870.

15 On whose behalf did you testify in this
16 matter?

17 A. Mr. Sonson.

18 Q. What were the allegations in this
19 matter?

20 A. He claimed that MF Global improperly
21 liquidated his account without proper notice and
22 resulting in a huge loss to him.

23 Q. What opinion did you provide in that
24 matter?

1 A. I gave the opinion that MF Global
2 improperly liquidated his account.

3 Q. Did you provide any other opinions in
4 that matter?

5 A. No.

6 Q. What was the basis for your opinion that
7 MF Global improperly liquidated the account?

8 A. The rules of -- at the time of the
9 Chicago Mercantile Exchange providing you had to
10 provide reasonable notice, and the fact -- that plus
11 he was told by MF Global that he had until the end
12 of the business day to come up with additional
13 margin, and they, in fact, liquidated him several
14 hours before the close of the business day.

15 Q. Did you conduct any analysis of trading
16 for this opinion?

17 A. I -- I was aware of the positions that
18 he had and -- and the amount of the margin calls and
19 that, but no, I didn't conduct an analysis of
20 whether his positions were proper or how he was
21 trading or anything of that nature.

22 Q. What was the ultimate outcome of this
23 case?

24 A. It is -- as a result subsequent to my

1 part of preparation of this report?

2 A. No.

3 Q. On page 2 of your report, you state that
4 you reviewed court documents. Which court documents
5 did you review?

6 A. The Complaint.

7 Q. Any other documents? Any other court
8 documents?

9 A. Probably the Answer. I don't know
10 though.

11 Q. When did you receive those documents?

12 A. I'd have to check my time records, but
13 probably shortly after I was retained by Mr. Asche.

14 Q. And when were you retained by Mr. Asche?

15 A. Somewhere in June of this year.

16 Q. And I guess, for the record, you just
17 looked back at your handwritten timesheets again?

18 A. Correct.

19 Q. And from whom did you receive the
20 Complaint and Answer?

21 A. Mr. Asche.

22 Q. On page 2 of your report, you state that
23 you reviewed "exhibits from Deposition of Eric
24 Moncada."

1 Q. Was it one or two compact discs?

2 A. I believe it was one.

3 Q. Do you have the compact disc with you?

4 A. No, I do not. That I left at home.

5 Q. Could we -- following up, could you

6 identify which compact disc you received from

7 Mr. Asche? It should be marked as either Exhibit 7

8 or Exhibit 8.

9 A. I don't know off the top of my head.

10 Q. Following the deposition, could you just
11 check your file and see which one of those two you
12 received?

13 A. Okay.

14 Q. And did you open the CD?

15 A. Quite honestly, no.

16 Q. Turning back to page 2 of your report,
17 which is marked as Exhibit 2, you state that you
18 reviewed "a portion of the CFTC data." What do you
19 mean when you refer to CFTC data?

20 A. The trade data excerpts showing the
21 various trades of the various traders on a given
22 day.

23 Q. Are these the exhibits that the CFTC
24 presented at Mr. Moncada's deposition?

1 A. Those and there was also -- I don't know
2 what you call it. There was a portion of all the
3 trades in a given day, trading date -- relevant
4 trading dates showing all the traders, the orders
5 entered and large lot orders, small lot orders,
6 trades executed, et cetera.

7 Q. Was that also an exhibit to
8 Mr. Moncada's deposition?

9 A. I don't recall if that was an exhibit or
10 if it was Mr. Asche got it for me, and I believe he
11 had requested it from your staff.

12 Q. Was this in electronic format?

13 A. Yes. You had to open it up, and it
14 opened up into big spreadsheets.

15 Q. So, the "CFTC data" that you refer to
16 here, does that show all market activity, not just
17 Mr. Moncada's?

18 A. I believe it did, yes, and then you were
19 able to isolate each trader by moving in by filter
20 and the data that was set.

21 Q. Did this trade data have a column that
22 showed who the trader was entering?

23 A. Yes.

24 Q. And did that -- in that column, did it

1 identify traders other than Mr. Moncada?

2 A. Yes.

3 Q. Were they anonymized so it only said
4 trader one, two, three?

5 A. Correct.

6 Q. And so when we're -- just to make sure,
7 when we talk about different types of data, when you
8 say "CFTC data," are you only referring to the data
9 that we just described that shows all market
10 activity, not just Mr. Moncada's?

11 A. Well, I did refer to just Moncada's
12 activity.

13 Q. And -- and trade data or -- would that
14 also be in electronic format?

15 A. Yes.

16 Q. So there are two sets of data? I'm just
17 trying to make sure that we're very clear.

18 A. Well, it was on one set of data, then
19 there were all these tag numbers for the different
20 traders. Then if you filter in and put in Moncada's
21 tag number, then it would just have Moncada's
22 trades.

23 Q. Okay. So -- and I'm -- I'm just trying
24 to make sure that when we talk about -- when we use

1 a term like "CFTC data," we know exactly what we're
2 talking about and can tell because there were a
3 couple of different data sets that are involved
4 here.

5 So, when you say, "CFTC data," is that
6 exclusively that spreadsheet that will show all
7 traders, including Mr. Moncada, even if you can
8 filter, where it will only show Mr. Moncada's?

9 A. Repeat it. Is that -- you said
10 exclusively?

11 Q. Right. There's another set of trade
12 data that is -- that was generated by the Futures
13 Commission Merchant that only shows Mr. Moncada's
14 and does not show other traders.

15 A. I've seen -- from Advantage Futures?

16 Q. Yes.

17 A. I've seen some of Advantage Futures's
18 documents, yes.

19 Q. When you say, "CFTC data," are you
20 referring to --

21 A. I would have included that in my
22 statement only because I -- maybe improperly I just
23 assumed that the CFTC obtained Advantage documents,
24 and, therefore, I considered them CFTC data, not

1 necessarily that you generated the daily statements
2 or the monthly statements from Advantage.

3 Q. Okay.

4 A. When I say, "CFTC data," I was referring
5 to all data that you had and then you forwarded.
6 So, that would have included the Advantage Futures
7 also.

8 Q. Okay. Okay. So, I guess just to wrap
9 everything in a bow, when you say, "CFTC data," you
10 are referring to two different sets of data. One
11 was produced by Advantage Futures, or generated by
12 Advantage Futures and then produced by the CFTC to
13 Mr. Moncada?

14 A. Right.

15 Q. The second set of data, which also falls
16 under the category "CFTC data," is the data that
17 shows trades by all market participants, including
18 Mr. Moncada?

19 A. Yes.

20 Q. Okay. You state in your report that you
21 reviewed a "portion of the CFTC data."

22 What portion of that data did you
23 review?

24 A. I reviewed -- I concentrated mostly on

1 Mr. Moncada's trades and large lot orders.

2 Q. Did you use the filter function --

3 A. Yes.

4 Q. -- to isolate Mr. Moncada's trades?

5 A. Yes.

6 Q. What days of the CFTC data did you

7 review?

8 A. They would be the days that I specified
9 in my report. The eight relevant trade dates that
10 are in the Complaint. I reviewed all the days
11 except for three dates: October 14th, 19th, and
12 30th of 2009.

13 Q. Did you review the entire days' trade
14 data for those days, for the days that you -- the
15 eight trade days minus the 14th, 19th and 30th?

16 A. I looked at the days for Moncada's
17 trades, yes.

18 Q. At the full day?

19 A. Yes.

20 Q. Did you look at trades placed by traders
21 other than Mr. Moncada?

22 A. No, other than -- I should say just
23 generally, I just -- you know, I looked at the other
24 large lot traders just to see what they were and the

1 frequency, but basically, relied on Mr. Moncada's
2 data.

3 Q. And when you say, "large lot orders,"
4 are you talking about orders for 200 lots or more?

5 A. Yes.

6 Q. When did you receive these documents or
7 the CFTC data?

8 A. I don't recall.

9 Q. Would your timesheets --

10 A. They might reflect it.

11 Q. Could you take a moment to review your
12 timesheet?

13 A. Sure. I would -- looks like around end
14 of June.

15 Q. And from whom did you receive these
16 documents?

17 A. Mr. Asche.

18 Q. Did you receive them in electronic
19 format?

20 A. Yes.

21 Q. And did you get them on a hard drive or
22 how did you -- how did you physically receive the
23 electronic documents?

24 A. It was a hard drive that was sent to me.

1 Q. And approximately how many files were on
2 that hard drive?

3 A. Too many. I don't know. I don't
4 recall.

5 Q. More than 20?

6 A. Documents you're saying?

7 Q. Yes.

8 A. Oh, I would say so, yes.

9 Q. Over a hundred?

10 A. Perhaps. It was just a lot of
11 documents, a lot of data.

12 MR. ASCHE: It was a large lot hard
13 drive.

14 BY MR. RIDENOUR:

15 Q. On page 2 of your report, which is
16 marked as Exhibit 2, you state that you reviewed
17 "CBOT Time and Sales"?

18 A. Yes.

19 Q. What do you mean by "CBOT Time and
20 Sales"?

21 A. The time and sales for the eight dates
22 in question. The -- I asked the Exchange for the
23 time and sales for those dates.

24 Q. By "the Exchange," you mean the CME?

1 them from Mr. Asche or Mr. Moncada.

2 Q. Did the daily account statements that
3 you receive have Bates numbers at the bottom of
4 them?

5 A. Have what numbers?

6 Q. Bates numbers.

7 A. Bates numbers? What are Bates numbers?

8 MR. ASCHE: They don't have them.

9 BY MR. RIDENOUR:

10 Q. They don't?

11 A. There's no numbers at the bottom.

12 Q. Okay. No numbers at the bottom.

13 MS. DIAMOND: Bates numbers are just
14 identification numbers. Usually when you get
15 documents in, we'll number them so that we can
16 keep track.

17 THE WITNESS: Okay.

18 BY MR. RIDENOUR:

19 Q. Going back for a moment, you mentioned
20 that you had gotten a hard drive with electronic
21 documents on it.

22 Did you open all of the files on that
23 hard drive?

24 A. I believe I opened all of them, and some

1 of them I couldn't get all the data because it was
2 beyond the spreadsheet capability of my Excel.

3 Q. Turning over to page 3 of your report,
4 which is marked as Exhibit 2, in the third paragraph
5 down starting with the phrase "One important
6 reason" --

7 A. Mm-hmm.

8 Q. -- the second sentence, there's a
9 parenthetical that says, quote, "CME Globex Product
10 Reference" --

11 A. Correct.

12 Q. -- end quote.

13 What document is that?

14 A. It's on the website. It is a -- it
15 shows which products -- which algorithms -- matching
16 algorithms are applicable to which product and the
17 amount of the priority and pro-rata and FIFO
18 allocation to that order.

19 Q. Mr. Wollack, I'm going to mark this
20 document as Exhibit 4, if you can please take a look
21 at it.

22 (Wollack Exhibit No. 4 marked
23 for identification.)

24 THE WITNESS: Okay.

1 10:41 a.m.

2 BY MR. RIDENOUR:

3 Q. Just a follow-up on a previous question
4 that we had. Earlier we were talking about daily
5 account statements that you received for the BES and
6 Serdika accounts traded by Eric Moncada.

7 Did you receive daily statements for --
8 what -- for what days did you receive daily account
9 statements?

10 A. I'd have to check my folders.

11 October 6th, 30th, in no particular
12 order, October 1st. Some of these are not complete
13 statements, they're just partials.

14 Q. And if they're partial statements, do
15 you know what -- why did you only receive partial?

16 A. I have no idea.

17 Q. You said that the first is a partial
18 statement?

19 A. First is a partial. I did receive one
20 for October 8th, but that wasn't a relevant date. I
21 don't think I even pulled the data.

22 October 12th, 13th, 14th, 19th, 26th,
23 that's a master, the 26th. There's some dailies in
24 there too, and some non-master. Then October 30th

1 was a partial of a master.

2 Q. And you said that on the 1st and 30th,
3 you received partial account statements. The
4 partial -- you received partial statements for the
5 master account?

6 A. Yes.

7 Q. Did you receive full statements for the
8 two sub accounts in which Mr. Moncada traded?

9 A. I don't believe I did for October 1st.
10 October 6th I did. Looks like I did for
11 October 12th, October -- let's see -- 13th is a
12 master here. I might have been incorrect before. I
13 did receive October 13th, but that's master only.
14 October 14th I received for the sub accounts, his
15 accounts. October 19th is a master and his
16 accounts. October 26th is a master and his
17 accounts, and October 30th was just the one page of
18 a master.

19 Q. Did you receive any account statements
20 for any accounts for October 27th?

21 A. If they're not here, I did not.

22 Q. And also for October 29th, you didn't
23 mention that date. Did you receive any account
24 statements for October 29th?

1 A. Apparently not.

2 I received the monthly statement.

3 Q. Which accounts did you receive the
4 monthly statement for?

5 A. For the Serdika and the BES Capital.

6 Q. Was that for --

7 A. 4858 and 5187.

8 Q. And that's for the month of October?

9 A. Correct.

10 Q. October 2009?

11 A. Yes.

12 Q. Just to confirm, there are no Bates
13 numbers or identifying numbers at the bottom of
14 any --

15 A. No, none of the statements I received
16 were there any numbers at the bottom.

17 Q. Going back to the document that we
18 marked as Exhibit 4 --

19 MR. McCACKEN: The list he just read
20 from, since there are no Bates numbers on them,
21 we're assuming they weren't produced by us.

22 Can he give us copies of those?

23 MR. ASCHE: Sure.

24 THE WITNESS: Yeah, sure. Okay.

1 BY MR. RIDENOUR:

2 Q. You said earlier you're not sure if you
3 received those from Mr. Moncada or Mr. Asche?

4 A. Correct.

5 Q. But you had received them from either
6 Mr. Moncada or Mr. Asche?

7 A. Yes.

8 MR. McCACKEN: Everything that came
9 from the CFTC, all the data would have had
10 Bates numbers on it, so . . .

11 MR. ASCHE: He's not saying he didn't
12 get them also from the CFTC. Just the ones he
13 was working on he didn't.

14 BY MR. RIDENOUR:

15 Q. So the ones that you reviewed for --

16 MR. ASCHE: He got a hard drive.

17 BY MR. RIDENOUR:

18 Q. The ones he reviewed for purpose --

19 MR. ASCHE: Right.

20 BY MR. RIDENOUR:

21 Q. -- of preparing your report --

22 MR. ASCHE: Right.

23 BY MR. RIDENOUR:

24 Q. -- were the ones you received from

1 either Mr. Moncada or Mr. Asche?

2 A. Correct.

3 Q. Okay. And I guess let's get back to the
4 document that we had previously marked as Exhibit 4.

5 Richard, when we had spoken, you
6 indicated that this was the document he got, his
7 understanding of the matching algorithm.

8 The document that you just gave us a
9 moment ago we're going to mark as Exhibit 5. At the
10 top it says, "CME Globex Product Reference" dated
11 September 20, 2013. It's a two-page document.

12 (Wollack Exhibit No. 5 marked
13 for identification.)

14 BY MR. RIDENOUR:

15 Q. Mr. Wollack, where did you get
16 Exhibit 5?

17 A. From the CME website.

18 Q. And when did you download this document?

19 A. I'd have to check my time records if I
20 even did that.

21 MR. ASCHE: It's dated September 23rd.

22 BY MR. RIDENOUR:

23 Q. Right. It's dated September 20th at the
24 top of the document, and your expert report was

1 BY MR. RIDENOUR:

2 Q. Did you review the transcript of
3 Mr. Moncada's deposition testimony?

4 A. I read it.

5 Q. When did you receive a copy of
6 Mr. Moncada's deposition?

7 A. Well, I reviewed deposition exhibits on
8 July 23rd, so I would assume I reviewed it somewhere
9 around then.

10 Q. And you're basing that recollection off
11 of?

12 A. My timesheet.

13 Q. To clarify, was this Mr. Moncada's
14 deposition from the litigation or prior
15 investigative testimony?

16 A. I don't recall.

17 Q. Who did you receive a copy of the
18 transcript of Mr. Moncada's testimony from?

19 A. Mr. Asche.

20 Q. Did you review transcripts of any other
21 depositions taken in this litigation?

22 A. No.

23 Q. Did you review transcripts of any
24 investigative testimony related to the CFTC's

1 investigation of Mr. Moncada?

2 A. No.

3 Q. Earlier you mentioned, I guess just to
4 clarify, that you reviewed the deposition exhibits
5 from Mr. Moncada's deposition on or about July 23rd.

6 At approximately that same time, you also read the
7 transcript of Mr. Moncada's deposition?

8 A. I would assume so.

9 Q. When did you first talk to counsel for
10 Mr. Moncada about acting as an expert?

11 A. It would have been in June.

12 MR. McCACKEN: Andrew?

13 MR. RIDENOUR: Yes.

14 MR. McCACKEN: Can I ask a quick
15 question to clarify?

16 MR. RIDENOUR: Sure.

17 MR. McCACKEN: Mr. Wollack, you
18 mentioned that -- I think you testified a
19 moment ago you didn't recall whether or not
20 what you reviewed was Mr. Moncada's deposition
21 from this litigation or whether it was
22 investigative testimony.

23 Do you recall saying that?

24 THE WITNESS: I recall saying that,

1 yes.

2 MR. McCACKEN: Okay. Do you know
3 whether you received both the deposition and
4 the investigative testimony?

5 THE WITNESS: I don't know for sure.
6 I do not believe I received the investigative
7 testimony, but I may be wrong on that.

8 MR. McCACKEN: Do you recall whether
9 the transcript that you reviewed was dated for
10 a deposition in, I believe, what, July 2nd or
11 3rd of this year?

12 THE WITNESS: I don't recall the date
13 on the deposition.

14 BY MR. RIDENOUR:

15 Q. Do you recall if it was a single day
16 transcript --

17 A. No, I do not.

18 Q. -- or a two-day transcript?

19 A. I do not.

20 MR. McCACKEN: Did you rely on your
21 review of the testimony as to come to your
22 opinion in this report?

23 THE WITNESS: I basically relied more
24 on the data, the trades that he made, and the

1 position that he had, not on the deposition
2 testimony.

3 MR. McCACKEN: I'm just trying to
4 clarify because we covered a couple times what
5 you relied on, and this is the first time you
6 mentioned reading his deposition, so I just
7 wanted to be clear whether you relied on his
8 deposition or not in preparing your report.

9 THE WITNESS: I do not -- did not rely
10 on his deposition in preparing the report.

11 MR. McCACKEN: All right.

12 BY MR. RIDENOUR:

13 Q. Mr. Wollack, had you met Mr. Moncada
14 before being retained as an expert witness in this
15 litigation?

16 A. No.

17 Q. How many times have you talked to
18 Mr. Moncada?

19 A. I would say three or four times on the
20 telephone. I've never met him personally.

21 Q. What days did you -- what dates did you
22 talk to Mr. Moncada?

23 A. I'd have to check my --

24 Q. Yes, check your timesheets.

1 me no. And I relied on that.

2 Q. What did Mr. Moncada tell you he used to
3 cancel -- to enter and cancel his orders?

4 A. He said he did it manually.

5 Q. And that conversation was either
6 July 11th or July 25th?

7 A. Correct. I assume it was one of those.

8 Q. What else did you discuss with
9 Mr. Moncada on July 11th?

10 A. Only in his assistance in getting me
11 data for the -- certain of the trade dates that were
12 in question that I didn't have and didn't have a
13 chance to review and so forth.

14 Q. What else did you discuss with
15 Mr. Moncada on July 25th?

16 A. That would, basically, be it. Most of
17 my substantive conversations were with Mr. Asche.

18 Q. Other than asking for Mr. Moncada's
19 assistance in getting data and the question as to
20 whether or not he was using high-frequency trading
21 algorithm, what other topics did you discuss with
22 Mr. Moncada?

23 A. I may have -- I think I may have asked
24 him whether or not he had any particular trading

1 pattern or style in his trading, and, basically, I
2 think his answer was that he was pretty much -- how
3 do you want to -- what's the right word? A
4 discretionary-type trader.

5 Q. What do you mean by "discretionary-type
6 trader"?

7 A. He would look at the markets, determine
8 whether he thought they were going up or down and
9 would enter orders accordingly.

10 Q. Is "discretionary trader" an industry
11 term?

12 A. I don't know if you'd call it an
13 industry term. I refer to it as someone who's not
14 mechanical. In other words, one who only trades
15 when certain -- I don't know if you call them --
16 not -- when certain trading patterns are, you know,
17 exhibited. They don't go on the basis of feel of
18 the market. They go on the basis of purely
19 technical analysis or pure fundamental analysis.

20 But a fundamental trader tends to be a
21 little discretionary because it's a question of
22 when -- when he decides to put the trade on based on
23 fundamentals, or as a technical trader, if he stays
24 with a system, will make his trade at a -- when his

1 various technical indicators fall in line with
2 whatever his particular technical system is and he
3 then makes the trade.

4 You can argue that even he's
5 discretionary because he could elect not to make the
6 trade even though the system tells him to make the
7 trade.

8 Q. So, Mr. Moncada is not a chart trader?

9 A. Oh, I don't know that he doesn't use
10 charts. I don't -- I just -- he's not mechanical in
11 the sense that he relies on his own feelings and
12 opinions at the moment, in addition to doing charts
13 and fundamentals.

14 Q. And when you use the -- "discretionary
15 trader" is your description of Mr. Moncada's trading
16 style, right? It's not what he, himself, calls his
17 trading style?

18 A. I don't know what he calls -- I don't
19 recall what he said his trading style is.

20 Q. "Discretionary trader" is your
21 description of his trading style, correct?

22 A. Yes, one's --

23 Q. What else did Mr. Moncada tell you about
24 his trading style?

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1 A. That was, basically, it. That he -- he
2 was active, made a lot of trades. He took market
3 risk, he said. He would take positions overnight.
4 Sometimes rely on the feel of the market, what he
5 felt the market was going to do.

6 Kind of eclectic. Maybe that was the
7 word I meant to use instead of discretionary.

8 Q. That's not an industry term?

9 A. No.

10 MR. ASCHE: In some industries.

11 BY MR. RIDENOUR:

12 Q. Did Mr. Moncada talk to you about the
13 size of positions that he would carry overnight?

14 A. I don't believe we discussed that.

15 Q. Did you discuss the equity that he had
16 in his trading accounts?

17 A. No.

18 Q. Did you discuss the margin requirements
19 that he had in his trading accounts?

20 A. No.

21 Q. Other than what we've already covered,
22 did you discuss anything else with Mr. Moncada on
23 the telephone?

24 A. No, not that I recall.

1 Q. Did you review any documents while
2 talking to Mr. Moncada?

3 MR. ASCHE: While?

4 THE WITNESS: While I was on the
5 phone?

6 BY MR. RIDENOUR:

7 Q. Correct.

8 A. No, I do not believe I did. Except --
9 no, I wouldn't review them when I asked him for some
10 technical help of how to download a document off the
11 hard drive and that, I didn't review the document.
12 I was just asking for his help in how do I do it.

13 Q. Did you discuss with Mr. Moncada any of
14 the documents that you reviewed, such as the trade
15 data?

16 A. No.

17 Q. Did Mr. Moncada tell you why he placed
18 large lot orders in CBOT wheat futures in
19 October 2009?

20 A. He mentioned that at times he felt the
21 market was going his way and would put in large
22 orders.

23 Q. Did you discuss any particular trades
24 that Mr. Moncada or any particular large lot orders

1 that Mr. Moncada placed in the CBOT wheat futures
2 market in October 2009?

3 A. No, I did not discuss individual trades
4 with him.

5 Q. When did Mr. Moncada tell you that he,
6 at times, felt the market was going his way in the
7 CBOT wheat futures market?

8 A. One of the telephone conversations. I
9 don't know which date.

10 Q. Was this before you reviewed the, what
11 you would call, the "CFTC data"?

12 A. No, it would have been after I
13 originally looked at the data.

14 Q. You had said that you didn't talk to
15 Mr. Moncada about any individual trades. Did you
16 discuss any of the individual days charged in the
17 Complaint and in Mr. Moncada's trading on those
18 days?

19 A. The only -- no, I would only -- I only
20 discussed -- no, I did not. I just wanted to know
21 which of the two accounts he traded in and why he
22 used large orders, and that's, basically, it.

23 Q. You said that's, basically, it. Was
24 there anything else that you had discussed?

1 A. Other than asking his technical
2 assistance so that I could find out what trades he
3 made on a given day out of all that data, I can't
4 think of anything else that we discussed.

5 Q. Did Mr. Moncada tell you why he canceled
6 large lot orders in the CBOT wheat futures market?

7 A. He told me that at that moment he felt
8 that the orders should no longer be there for his
9 feel of the market.

10 Q. Why did he say his orders should no
11 longer be there?

12 A. I think, basically, he said that he
13 didn't get filled, and he didn't want the orders
14 anymore.

15 Q. Did Mr. Moncada tell you that he
16 intended to fill his large lot orders in
17 October 2009?

18 A. He said that he put in the orders. If
19 he got filled, fine. If not, he would cancel.

20 Q. But did he say if he intended to fill
21 the large lot orders?

22 A. I don't believe we discussed that.

23 Q. Did you ask him if he intended to fill
24 the large lot orders he placed in October 2009?

1 A. I don't recall if I asked him or not.

2 Q. Earlier when you were discussing his
3 trading style as eclectic and you had talked about a
4 couple of different things that you had talked about
5 with him in terms of trading style, did Mr. Moncada
6 give you any examples of how he traded?

7 A. No.

8 Q. Did you ever discuss spread trading with
9 Mr. Moncada?

10 A. No.

11 Q. When you -- a couple of times you have
12 mentioned a "feel of the market." Is that a term
13 that Mr. Moncada had used?

14 A. I don't recall if he used that word or
15 not.

16 Q. When you mention "feel of the market,"
17 what does that mean to you?

18 A. At the moment a trader feels that the
19 market is going up or down from all of the data, all
20 the stimuli that he gets from observing price
21 movement, observing size, looking at his charts,
22 whatever it is. It's just a feel that, "Oh, this
23 market is going higher or this market is going
24 lower," or, "I don't know where this market's

1 going." So, that's a "feel of the market."

2 Q. That's your understanding of the term?

3 A. Yes.

4 Q. Did you discuss that concept with
5 Mr. Moncada?

6 A. I didn't discuss the concept, no.

7 Q. Earlier when I asked you if Mr. Moncada
8 told you why he canceled the large lot orders in
9 October 2009, you mentioned that he felt his orders
10 should no longer be there based on his feel of the
11 market. What did he tell you exactly that -- that
12 you then interpret as being based on his feel of the
13 market?

14 A. Well, my -- my opinion of the way he
15 traded was that when he said that he no longer
16 wanted that order and he canceled it is that he felt
17 that conditions probably have changed.

18 I didn't go into great detail with him.

19 Q. Did he talk about specific instances
20 where --

21 A. No, we did not talk about specific
22 trades or instances.

23 Q. Did you talk about the eight days
24 charged in the CFTC's complaint and his trading on

1 those days?

2 A. I did ask him which trades the CFTC was
3 specifically looking at, and he, quite honestly,
4 didn't seem to know.

5 Q. For the eight days charged in the
6 Complaint, was that your only discussion with
7 Mr. Moncada about trading on those eight days?

8 A. I believe so.

9 Q. Mr. Wollack, I'd like to ask you a few
10 questions about your general experience looking at
11 trading data.

12 Have you ever had any experience doing
13 statistical analysis of trade data?

14 A. No.

15 Q. Earlier you had mentioned that in the
16 context of Business Conduct Committee proceedings at
17 the CME that you had looked at time and sales data.
18 When you looked at those time and sales data, what
19 were you looking for?

20 A. We were looking for whether the trades
21 could have occurred when people said they occurred.

22 Q. Those time and sales data, did those
23 relate to pit trades?

24 A. Back then, yes.

1 Q. So, those time and sales data did not
2 relate to electronic trading?

3 A. There was not electronic trading in
4 those days to speak of.

5 Q. Prior to your retention in this case,
6 had you ever reviewed trade data of an -- and aside
7 from your review of time and sales data at Business
8 Conduct Committee proceedings, had you reviewed
9 trading data of the sort that was produced to you by
10 Mr. Asche?

11 A. No, except I have reviewed daily and
12 monthly statements before, but not the other data
13 which showed the -- all the trades of all the
14 various traders and what orders they entered, what
15 orders they canceled, et cetera.

16 Q. And the daily and monthly statements
17 wouldn't include times the trades were executed,
18 correct?

19 A. Correct, it wouldn't.

20 Q. Mr. Wollack, if I can point you back to
21 your report, which we've marked as Exhibit 2, in the
22 second paragraph on Page 2 of your report, you refer
23 to "Moncada's trading style."

24 A. Mm-hmm.

1 Q. When you refer to Mr. Moncada's trading
2 style, is that based off of the conversations that
3 you had with Mr. Moncada?

4 A. Well, partly. He told me he had made
5 numerous trades, and so forth, but the data bore
6 that out.

7 Q. The data bore out that he made numerous
8 trades?

9 A. Correct. And which he had told me he
10 traded a lot and took positions intra-day and
11 overnight. The data bore that out.

12 I didn't have to -- I didn't have to ask
13 him whether he intended to be executed on large
14 orders because that's the basis of the Complaint,
15 and if he's -- no point in asking a question where
16 if he said -- if he denied it in his Answer, so, you
17 know, it was -- of course he intended to be executed
18 in large orders, otherwise he would have pled guilty
19 and the case would be over.

20 So, it's -- you know . . .

21 Q. You said that the data bore out
22 Mr. Moncada's statements about that he made numerous
23 trades --

24 A. Mm-hmm.

1 Q. -- and carried overnight positions.

2 Did you review the data to determine
3 what other market participants were doing in terms
4 of their trading style?

5 A. No, I did not.

6 I mean, I was aware from -- is it
7 Mr. Bessembinder?

8 Q. Bessembinder?

9 A. That Mr. Moncada's trades, percentage of
10 large orders vis-a-vis others, that I accepted his
11 data. I didn't go and review the other traders and
12 what they did with their large orders and how many
13 trades they made and so forth.

14 Q. Looking over to page 3 of your report
15 marked as Exhibit 2, in the first paragraph, about
16 halfway down the first paragraph you say, "In most
17 cases he was adding to an existing position."

18 Do you see that?

19 A. The first full paragraph or the partial
20 at the top?

21 Q. The first partial paragraph.

22 A. Yes.

23 Q. What do you mean by, "In most cases"?

24 A. Well, on the -- on the dates in

1 increments, and I found no evidence that all of a
2 sudden there were no trades for two, three, four
3 ticks, that there was no spikes up in the market
4 where you could get a five cent move in a matter of
5 a half a minute or a minute.

6 Seemed to me that a market participant
7 could get filled a quarter tick from wherever his
8 large order was entered.

9 Q. So I guess to summarize, you're saying,
10 in your mind, "erratic price movement" is when the
11 price moves more than one tick between trades?

12 A. More than one tick when there's lack of
13 liquidity, but this market was moving in almost --
14 in all instances moving in one-quarter ticks at the
15 most. It would sometimes stay there for a while.
16 Sometimes his -- if he had a big buy order, it was
17 selling. He was -- sometimes a big buy order was on
18 the bid side of the market, and he was selling on
19 the offer side of the market one quarter tick. It's
20 not an erratic price.

21 Q. What's your support for your
22 interpretation of erratic price movement?

23 A. My experience as a trader. A flash
24 crash would be an example.

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1 Q. You said that you didn't see any spikes
2 of such as a five cent move in 30 seconds to a
3 minute after the large lot order. Did you do any
4 analysis of trade data to determine what price
5 movements did occur following the 710 large lot
6 orders Moncada placed on the eight days charged in
7 the Complaint?

8 A. No, I did not.

9 Q. Did you --

10 A. I found -- I did look at Bessembinder's
11 report, and his data seemed to support my opinion,
12 although he reached a different conclusion.

13 Q. By saying that his data supports your
14 opinion, what do you mean? What data --

15 A. I think he -- I think somewhere in his
16 report, if my recollection is correct, he said the
17 result of these large orders would increase the
18 bid-ask by one-tenth of one cent, or something,
19 which is less than the -- a one-quarter tick.

20 In other words, it didn't move the
21 market, and he says this is a result, this becomes a
22 result of excessive market movement. And it just
23 isn't there. The data's not there. The market
24 never moved.

1 He makes a statement. I could look at
2 it in his report, but . . .

3 Q. Did you conduct any analysis of trade
4 data for time periods when Moncada was not placing
5 large lot orders to determine what average price
6 movement is in the CBOT wheat futures market?

7 A. No, I just basically looked at the time
8 and sales and looked to see whether the market
9 during the day was moving in one-quarter tick
10 increments in which case it was doing so almost all
11 the time.

12 Q. So you just eyeballed the time and
13 sales?

14 A. Yeah, I looked down, but I didn't do
15 a -- any kind of detailed analysis.

16 Q. Looking back --

17 A. I did look at time and sales in relation
18 to some of his large lot orders that were entered
19 into the market to see whether that had an affect of
20 having the market run or not, and you know --

21 Q. By "market run," what do you mean?

22 A. Puts in an order to buy a large lot at
23 534 and a quarter, and I looked to see what the next
24 trades were, and it was 531 and a half, 531 and a

1 quarter, 531 and a half, three-quarters.

2 In other words, there was no -- I didn't
3 find any evidence that he put in a 500 lot order, a
4 large order, and the market went from 534 all the
5 way to 535 just like that.

6 In other words, it would just move up
7 orderly if it moved up at all. Sometimes it didn't
8 move up at all. Sometimes it actually came back
9 down.

10 Q. Did you look to see how often after the
11 710 times that Moncada put in large lot orders the
12 price did move and in the same direction of his
13 order?

14 A. No, I did not look in terms of make a
15 study of that.

16 Q. A little bit farther down on page 3 at
17 the end of that first partial paragraph on page 3 of
18 your report, Exhibit 2, you state, quote, "In fact,
19 on some occasions, the market went the opposite
20 direction of his large buy or sell orders."

21 What do you mean by "opposite
22 direction"?

23 A. Well, the one instance when he was -- I
24 think it was October -- I forgot the date. He was

1 interested in buying his orders, then he feels he's
2 in the right position, you know. There's nobody
3 willing to sell to him. So his long position is the
4 right position, and he cancels the order then when
5 he's not filled immediately.

6 Q. When you said -- I guess the second part
7 of that is direction of the market.

8 Are you saying that large lot orders can
9 be used to test the direction of the market?

10 A. Well, it's basically the same -- the
11 same thing.

12 In other words, if he puts in a large
13 buy order and no one sells to him, then he could
14 draw the conclusion that this market is more likely
15 to go up than go down.

16 Q. Did Mr. Moncada tell you that he entered
17 large lot orders to test the strength of the market?

18 A. Quite honestly, I don't recall if he
19 told me that or not.

20 Q. In the next paragraph on page 3 of your
21 report marked as Exhibit 2, you state, quote, "One
22 important reason for frequently entering and
23 canceling orders is to obtain time and allocation
24 priority in the execution of his orders," close

1 just wanted to make sure "his."

2 MR. ASCHE: He's an expert in
3 commodities, not grammar.

4 MS. DIAMOND: Me either. I just
5 wanted to make sure I understood "his." Thank
6 you.

7 THE WITNESS: And then I went down to
8 explain, as an example, "Thus, if Moncada was
9 the first, he would get this."

10 MS. DIAMOND: Okay. Thank you.

11 BY MR. RIDENOUR:

12 Q. Turning over to page 4 of your expert
13 report marked as Exhibit 2, on the first full
14 paragraph about three-quarters of the way down, you
15 state, frequently -- sorry. Quote, "Frequent
16 cancellation would not affect the price because
17 traders would notice, adjust their trading
18 accordingly and ignore frequent cancellations,"
19 close quote.

20 Did you analyze the trading data in any
21 way to determine whether frequent entry and
22 cancellation of large orders would affect the price
23 of the CBOT wheat futures?

24 A. Well, I already explained that I didn't

1 see where the large orders moved the market. The
2 market seemed to be orderly trading in one-quarter
3 tick minimum increments.

4 What I was referring to here is that
5 somebody who trades a given market, in this case the
6 wheat market, if he's watching the market and he
7 sees all of a sudden the bids increase dramatically
8 and then decrease and increase and decrease, he's
9 going to see they're frequent cancellations, and he
10 will realize -- if he's an experienced trader, he'll
11 realize what's happening, that somebody's, you know,
12 doing this. It could be a high frequency trader or
13 not.

14 Q. Did you analyze the data to determine
15 if, in fact, other traders were reacting to
16 Moncada's large orders and cancellations?

17 A. No, I did not.

18 MR. ASCHE: Well, other than --
19 BY MR. RIDENOUR:

20 Q. Have you ever --

21 MR. ASCHE: -- what he testified
22 before that he saw that the market didn't go up
23 or down more than one-quarter tick.

24 MR. McCRACKEN: The testimony speaks

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1 for itself, Richard. You don't need to start
2 clarifying what he said.

3 MR. ASCHE: It wasn't a question of
4 the testimony. It was the question he hadn't
5 said anything yet.

6 BY MR. RIDENOUR:

7 Q. Did you --

8 MR. McCACKEN: Let's let the witness
9 answer.

10 MR. ASCHE: Let Mr. Ridenour conduct
11 the examination.

12 BY MR. RIDENOUR:

13 Q. Did you ever conduct a survey of other
14 traders to determine if, in fact, traders do adjust
15 their trading and ignore frequent cancellations?

16 A. No. I just know that my own experience
17 as a trader, if I see somebody doing that in a
18 market that I'm trading and following closely, I
19 realize what's happening and --

20 Q. So, this is based on your trading
21 experience?

22 A. Just my trading experience and the fact
23 that my trading experience and my background would
24 tell me that any other experienced trader, if he

1 noticed that was going on, would know what's
2 happening, and it happens with high-frequency
3 trading and algorithm trading much more frequently
4 than it used to because these orders can go in and
5 out extremely quickly.

6 Q. You stated earlier that you never used a
7 high-frequency trading algorithm?

8 A. No, I never. I never used it myself.

9 Q. On page 6 of your report, marked as
10 Exhibit 2, in the paragraph under the header
11 "October 27th," about a little over halfway down --
12 I'm sorry. Hold on one second.

13 On -- my apologies.

14 On the first full paragraph on page 6 of
15 your report, the third sentence, quote, "The large
16 buy orders had little or no effect," close quote.

17 What do you mean by "little effect"?

18 MS. DIAMOND: Do you see where that is
19 in the report?

20 MR. ASCHE: Do you see where they are?

21 THE WITNESS: Mm-hmm. Yes.

22 MS. DIAMOND: Okay.

23 THE WITNESS: Well, what I meant by
24 that is that if he's got a large buy order and

1 he's selling one or two ticks better than his
2 large buy order, if it was one tick better,
3 it's, basically, had no affect. It's the offer
4 side of the market. And little effect would be
5 if he was able to sell two ticks better; but,
6 you know, it wasn't like you put in what he's
7 referring to. It's not like he's putting in
8 large orders and all of a sudden he's able to
9 sell four, five, six, seven ticks better.
10 He's, basically, selling on the offer side of
11 the market.

12 BY MR. RIDENOUR:

13 Q. Or possibly one tick better?

14 A. Possibly one tick better, but you have
15 to realize he was also taking market risk at that
16 point in time.

17 Q. Over on page 8 of your report --

18 A. Mm-hmm.

19 Q. -- the first paragraph under
20 "October 12th," you state, quote, "Moncada may have
21 anticipated that the market was not going higher and
22 decided to liquidate a position -- a portion of his
23 long position," close quote.

24 Did Moncada tell you that he anticipated

1 the market was moving higher in this instance?

2 A. No.

3 MR. ASCHE: Off the record a second?

4 MR. RIDENOUR: Sure. Off the record
5 at 12:12.

6 (Discussion held off record.)

7 MR. RIDENOUR: Back on the record at
8 12:13.

9 BY MR. RIDENOUR:

10 Q. Looking over at page 9 of your report,
11 marked as Exhibit 2, the top sentence, it says,
12 quote, "Time and sales for the relevant dates does
13 not indicate any increased volatility during the
14 period of his large canceled orders to the time of
15 the executed smaller trades," close quote?

16 A. Mm-hmm.

17 Q. The time and sales you reference here,
18 that's the same time and sales data that you got
19 from the CME, correct?

20 A. Correct.

21 Q. You stated earlier that you did not
22 perform any statistical analysis of any of the trade
23 data, correct?

24 A. Correct.

1 Q. So, you did not determine what average
2 volatility is in the CBOT wheat futures market,
3 correct?

4 A. Correct.

5 Q. And you did not perform any statistical
6 analysis to determine volatility in the CBOT wheat
7 futures market following Mr. Moncada's large lot
8 orders, correct?

9 A. Correct.

10 MR. RIDENOUR: Can we take a
11 five-minute break so we can talk to Ken and try
12 to --

13 MR. ASCHE: Do you want us to leave
14 the room?

15 MR. RIDENOUR: Yes, if you can,
16 please.

17 Off the record at 12:14 p.m.

18 (Recess taken.)

19 MR. RIDENOUR: Back on the record at
20 12:30.

21 MS. DIAMOND: During the testimony, we
22 discussed obtaining documents from you,
23 Mr. Wollack.

24 THE WITNESS: Yes.